Verizon Wireless *and* Communications Workers of America, AFL–CIO.

Verizon New York Inc., Empire City Subway Company (Limited), Verizon Avenue Corp., Verizon Advanced Data Inc., Verizon Corporate Services Corp., Verizon New England Inc., Verizon Services Corp. and Verizon New Jersey, Inc. *and* Communications Workers of America (CWA).

Verizon Pennsylvania Inc., Verizon Services Corp., and Verizon Corporate Services Corp. *and* Communications Workers of America, District 2-13, AFL–CIO, CLC.

Verizon Washington, D.C. Inc., Verizon Maryland Inc., Verizon Virginia Inc., Verizon Services Corp., Verizon Advanced Data Inc., Verizon South Inc. (Virginia), Verizon Corporate Services Corp. and Verizon Delaware Inc. *and* Communications Workers of America, District 2-13, AFL–CIO, CLC.

Verizon California Inc. and Verizon Federal Inc., Verizon Florida Inc., Verizon North LLC, Verizon Southwest Inc., Verizon Connected Solutions Inc., Verizon Select Services Inc. and MCI International, Inc. *and* Communications Workers of America, AFL–CIO, District 9. Cases 04–CA–156043, 05–CA–156053, 02–CA–156761, 02–CA–157403, 31–CA–161472

August 3, 2020

DECISION, ORDER, AND ORDER DENYING MOTION FOR RECONSIDERATION

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On June 24, 2020, the National Labor Relations Board issued a Decision and Order and Notice to Show Cause[1] that, as relevant here, severed and retained two complaint allegations affected by the Board's decision in *Caesars Entertainment d/b/a Rio All-Suites Hotel & Casino*, 368 NLRB No. 143 (2019).[2] Specifically, the two retained issues are whether the Respondents violated Section 8(a)(1) of the Act by maintaining sections 1.6 and 3.4.1 of their 2015 Code of Conduct, both of which restrict employees' use of the Respondents' IT systems.[3]

In *Caesars Entertainment*, the Board overruled *Purple Communications, Inc.*, 361 NLRB 1050 (2014), and announced a new standard that applies retroactively to all pending cases in which it is alleged that, as here, an employer violated the Act by maintaining rules restricting the use of its IT resources for nonwork purposes. Id., slip op. at 1–9. The *Caesars Entertainment* standard states, in relevant part, that "an employer does not violate the Act by restricting the nonbusiness use of its IT resources absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other, or proof of discrimination." Id., slip op. at 8. Under this limited exception, employees are permitted to access their employer's IT resources for nonbusiness use, even absent discrimination, where the employees would otherwise be deprived of any reasonable means of communicating with each other. Because the parties did not previously have an opportunity to address whether this exception to the rule of *Caesars Entertainment* applies to the facts of this case, the Board issued a notice to show cause why the retained allegations should not be remanded to the judge for further proceedings in light of *Caesars Entertainment*, including, if necessary, the filing of statements, reopening the record, and issuance of a supplemental decision.

The Respondents and the Charging Parties filed responses to the notice to show cause, and the Respondents also filed a reply. The Respondents oppose remand, asserting that it is unnecessary because the Charging Parties have never asserted that the *Caesars Entertainment* exception applies. The Charging Parties support remand in order to litigate whether the Respondents have legitimate business justifications for the rules restricting use of their IT systems and whether the Respondents apply sections

[1] 369 NLRB No. 108 (2020). On July 22, 2020, the Charging Parties filed a motion for reconsideration of that Decision and Order and Notice to Show Cause. We shall deny the motion for reconsideration because the Charging Parties have not identified any material error or demonstrated extraordinary circumstances warranting reconsideration under Sec. 102.48(c)(1) of the Board's Rules and Regulations.

[2] Administrative Law Judge Donna Dawson first addressed the lawfulness of secs. 1.6 and 3.4.1 of the Respondents' 2015 Code of Conduct in her May 25, 2017 decision (published as appendix A to the Board's decision in 369 NLRB No. 108), in which she found that the maintenance of the provisions violated Sec. 8(a)(1) of the Act. After the issuance of her decision, the Board, on March 22, 2019, remanded most of the complaint's allegations to the judge to give the parties the opportunity to supplement the record in light of the Board's decision in *Boeing Co.*, 365 NLRB No. 154 (2017). However, the Board severed and retained the allegations concerning secs. 1.6 and 3.4.1, in addition to a third allegation that the Board dismissed in 369 NLRB No. 108.

[3] Sec. 1.6 prohibits "the use of company resources at any time (emails, fax machines, computers, telephones, etc.) to solicit or distribute." Sec. 3.4.1 prohibits employees from using the Respondents' email, instant messaging, Intranet, or Internet systems to transmit "offensive" or "harassing" content and "chain letters," "unauthorized mass distributions," "communications primarily directed to a group of employees inside the company on behalf of an outside organization," or materials that could cause the Respondents "embarrassment."

1.6 and 3.4.1 discriminatorily.[4] In their reply, the Respondents note that the Charging Parties have not contended in their response that the Respondents' IT systems are employees' only reasonable means of communication or that they would put forth any evidence or argument in support of that position if the case were remanded.

We agree with the Respondents that remand is not appropriate here and that further proceedings before the judge would serve no purpose.[5] Because there is no indication in the record that the Respondents' employees do not have access to other reasonable means of communication, and no party contends that the Respondents' IT systems furnish the only reasonable means for employees to communicate with one another, we find that the Respondents did not violate Section 8(a)(1) by maintaining Sections 1.6 and 3.4.1 of their 2015 Code of Conduct. See *T-Mobile USA, Inc.*, 369 NLRB No. 90, slip op. at 1 (2020).

ORDER

The severed and retained allegations concerning sections 1.6 and 3.4.1 of the Respondents' 2015 Code of Conduct are dismissed.

IT IS FURTHER ORDERED that the Charging Parties' motion for reconsideration of the Board's Decision and Order and Notice to Show Cause, reported at 368 NLRB No. 143, is denied.

Dated, Washington, D.C. August 3, 2020

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] The Charging Parties additionally argue that the Board's Notice to Show Cause was premature. Specifically, they argue that, because the Board's Rules and Regulations allow 28 days to file a motion for reconsideration of the decision in 369 NLRB No. 108, the Board erred by requiring them to respond to the Notice to Show Cause in fewer than 28 days. The Charging Parties do not cite, and we have not found, authority for their position. In any event, as noted in fn. 1, we are denying the Charging Parties' motion for reconsideration.

[5] The Charging Parties' request for a remand in order to litigate whether the Respondents have legitimate business justifications for the rules restricting use of their IT systems is without merit. In *Caesars Entertainment*, the Board balanced employees' NLRA rights and employers' interests to establish generally that employers may lawfully restrict employees' nonbusiness use of their IT systems, unless the restriction is discriminatory, or the employees have no other reasonable means of communicating with each other. The Board does not conduct this balance anew in each case.

Also, we reject the Charging Parties' argument that a remand is necessary to enable them to submit evidence that the Respondents have allowed employees to use their IT resources to send mass communications for non-business purposes. The General Counsel does not allege that the Respondents violated Sec. 8(a)(1) by discriminatorily enforcing secs. 1.6 and 3.4.1 against employees for union-related communications, and it is well settled that a charging party cannot enlarge upon or change the General Counsel's theory of a case. *Kimtruss Corp.*, 305 NLRB 710, 711 (1991).